Supreme Court, U.S.
FILED

(1)

No. 03 639 AUG 11 2003

OFFICE OF THE CLERK

In The

Supreme Court of the United States

—

MILDRED SINGH,

Petitioner

v.

JOHN E. POTTER,
Postmaster General of the United States Postal Service,

Respondent

On Petition For Writ Of Certiorari
To The United States Court of Appeals for the Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

Mildred Singh, Pro Se
8332 Coral Lane
Pico Rivera, CA 90660
(562) 942-1349

5-11

QUESTIONS PRESENTED

1. When there is an attorney and Administrative Judge conflict, employee makes request for Judge to be replaced, there is no response and she is not replaced, is defendant entitled to summary judgment?

2. Is a certified mail receipt with a handwritten date instead of an official postmark, valid proof of mailing, when the letter is delivered to an unknown/unauthorized party?

3. Does a notarized statement signed under penalty of perjury confirming discrimination allegations, outweigh a supervisor's general statement denying discrimination against plaintiff?

PARTIES TO THE PROCEEDING

Petitioner, Mildred Singh, was the plaintiff in the district court and appellant in the court of appeals. Respondent John E. Potter, Postmaster General of the United States Postal Service was the defendant in the district court and appellee in the court of appeals.

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Adams v Ameritech Services, Inc. 231 F.3d 414 (7th Cir. 2000)

Ben S McVay v. Delaware County Auditor Board of Revision and the Delaware County Auditor, Case No. 96-P-645, (July 25, 1997).

Community Dental Services v Tani, 282 F.3d 1164, 1169
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Daniel Masden v State of Nevada, 36 Fed. Appx. 609; 2002 U.S. App. Lexis 11721

Constitutional Provisions

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Statutes

Title VII of the Civil Rights Act of 1964

Title 28, U.S.C. Section 455

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Title 29, CFR 1614.101(b)

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Title 29, CFR 1614.109(3)(i)

Title 29, CFR 1614.110(a)

Federal Rules of Civil Procedure, Rule 60(b)(6)

Federal Rules of Evidence, Rule 401

OPINIONS BELOW

The opinion of the Court of Appeals unofficially reported at 56 Fed. Appx. 433.

JURISDICTION

The decision of the United States Court of Appeals was entered on February 24, 2003. A Court of Appeals order denying the petition for rehearing was filed on May 12, 2003. The Court has jurisdiction under 28 U.S.C. section 1254(1).

PROCEDURAL PROVISIONS

Title VII of the Civil Rights Act of 1964 prohibits agencies from discriminating in employment based on race, color, religion, sex or national origin. The Age Discrimination in Employment Act prohibits discriminating against people over 40 years of age and older in hiring, discharge, pay, promotions and other terms and conditions of employment.

STATEMENT OF THE FACTS

This case stems from an Equal Employment Opportunity complaint filed by Mildred Singh, postal employee, based on age, race and sex discrimination in the U S Postal Service, hereafter referred to as Postal Service.

October 1993, Singh, an African American female, Personnel Clerk, was reassigned to the Safety Office. Singh was 47 years old with 28 years of service. March, 1996, Kathy Major, Caucasian, 29 years old with 10 years in the Postal Service, was detailed to the Safety Office. Darrell Lewis, an African American male, was also detailed to the Safety Office. He had been detailed to the office at least once before. October 1996, a vacancy announcement was posted for two Human Resources Specialist positions. Singh, Major and Lewis applied for the positions. Singh alleged her immediate Supervisor, Joan Harris, told a person who had access to or was a part of the Review Board, in a telephone conversation, not to interview her.

This was not the first time Harris had attempted to prevent Singh's advancement. Once before, Harris would not complete an evaluation for a job with the Postal Inspection Service, even though it was given to her on two occasions in one week because Harris was going to be out of the office for two weeks.

Singh filed an Equal Employment Opportunity complaint with the U. S. Postal Service. An investigation was conducted, which included interviewing Harris. She made a general statement alleging she did not have anything to do with the selection process, when in fact, Harris made the final selection. Harris selected two employees who were detailed to the positions, even though they were ineligible for the positions because they were detailed

to the positions. If the selected candidates were going to apply for the positions, they had to be removed from the positions 60 days before the vacancies were posted. The candidates remained in the positions from the beginning of their details until they were promoted into the positions.

Singh objected to the decision of no discrimination because the EEO investigator did not review all of the promotional files and persons interviewed made general statements of denial. Joan Harris submitted a handwritten statement denying she discriminated against Singh. *(A-D)*

The EEO investigator also interviewed Kathryn Robinson, Human Resources Specialist, Personnel Services. The investigator stated Robinson's statement was "There were thirty-two (32) candidates for the posted vacancies and the interview board eliminated candidates prior to interviewing." She stated that eleven (11) candidates were interviewed for the positions and two (2) were selected. No further redress was offered. The investigator did not secure any statements under penalty of perjury or under oath of affirmation. This was the investigator's Final Interview Letter and it did not have a signature. *(A-E)* EEO investigators are authorized to administer oaths. Statements of witnesses shall be made under oath or affirmation or alternative, by written statement under penalty of perjury. *(29 CFR 1614.108©(2)*

Singh then filed the formal EEO which took approximately 235 days to complete. The agency shall

complete its investigation within 180 days of the date of filing of an individual complaint. *(29, CFR 1614.108(e))*

Singh requested a Pre-Conference Hearing before an Administrative Law Judge. Prior to the hearing, Singh called the EEOC referral service to secure names of attorneys. Three names were given, two men and one woman. Singh selected the woman as her representative.

Singh met with Attorney Cassandra Jones and hired her as her representative. Jones made derogatory remarks about one of the judges without calling her name. The Pre-Conference hearing was set for December 12, 1997. Judge Dawn Tilman was the presiding judge.

Singh attended the hearing and requested a continuance. ALJ Tilman made derogatory remarks about Jones, including she never shows up for the Pre-Conference Hearing.

After Attorney Jones and Judge Tilman made remarks about each other, Singh was uncomfortable with Judge Tilman presiding over her case. Singh wrote a letter requesting ALJ Tilman be replaced because of the conflict between Jones and Tilman. *(A-F)*

There was no response to the request to replace Judge

Tilman and Tilman conducted a telephone hearing on March 8, 1998.

James Andrews, Labor Relations Specialist for the Postal Service filed a motion requesting a conclusion without a hearing because there were no material facts in dispute for genuine issues as to creditability. He also stated that the Review Committee members were Cathy Sinai, Susan Johnson, and Jerry Salas. Cathy Sinai was not on the Review Board. She was replaced by Tom Jones. Andrews misrepresented who the Review Board members were and the EEO counselor interviewed Sinai, who was not on the board. If the investigator had reviewed the promotional files, she would have known who the board members were because they all signed the list of finalist.

Attorney Jones filed an "Opposition to Motion or Decision Without A Hearing" stating there were genuine issues of material facts and the motion for a decision without a hearing should be denied.

ALJ Tilman found "Complainant failed to prove discrimination on any basis." ALJ Tilman signed that finding on February 12, 1999, 355 days after the hearing, and then retired. Unless the Administrative Judge makes a written determination that good cause exists for extending the time for issuing a decision, the administrative judge shall issue a decision on the complaint, and shall order appropriate remedies and

relief where discrimination is found, within 180 days of receipt by the administrative judge of the complaint file from the agency. *(CFR 1614.109(3)(i)*

Administrative Judge Larry Abrams forwarded the findings to the EEO Appeals Coordinator, Bernardine Faison. There was no communication from ALJ Tilman during that time and Singh was never advised of her right to seek discovery. When files were requested, there was no response.

Singh was 17 years older than Major, a member of a protected group, qualified for the position, and was not given a fair opportunity to compete. Singh had worked in the Safety Office for three years and had been given three special achievement awards by Harris.

Where direct evidence was not necessary to prevail, there was direct evidence available if the investigator had interviewed other employees from the Safety Office. Instead, the investigator only interviewed Harris.

On April 29, the Final Agency Decision was issued by Bernerdine Faison for Brian Gillespie, Manager, Human Resources, Pacific Area. This decision was issued 56 days after the ALJ Tilman rendered her findings. *(A-G)* When an administrative judge has issued a decision under CFR 1614.109(b), (g) or (i), the agency shall take final action on the

complaint by issuing a final order within 40 days of receipt of the hearing file and the administrative judge's decision. *(CFR 1614.110(a)*

The Final Agency Decision was mailed to Attorney Jones. The Certified mailing receipt, which was submitted as proof of mailing, did not have an official Postal Service roundate/handstamp. The date was handwritten on the receipt. *(A-H)* This was disclosed during a deposition. For certified mail to be officially mailed, the mailing receipt must have a postmark.

June 7, 1999, Singh appealed the Administrative Judge's Decision to the Equal Employment Opportunity Commission in Washington, D.C. based on the following reasons:

1. Andrews misrepresented who the Review Board members were;

2. Cathy Sinai was interviewed during the investigation even though she was not on the Review Board;

3. The Employment Labor Relations Manual stated that if an individual is an applicant for a position (Human Resources Specialist), the higher-level position must be terminated before the 61st day; and

4. An individual who has served in a vacant position for more than 60 days is ineligible for appointment to that position.

Lewis and Major remained in the positions the whole time.

July 14, 1999, based on a response letter from Bernardine Faison to William J. Bartlett, EEOC, Director Compliance & Control Division, the EEOC did not conduct an investigation at all. The Appeal Singh mailed to the EEOC on July 7, on Appeal, was sent to Bernardine Faison in the Postal Service, who ruled it was untimely, and then the EEOC ruled it was untimely. *(A-I)* The EEOC misrepresented that it would conduct its own investigation.

November 24, 1999, Singh requested to Re-Open the hearing based on new evidence. Singh transferred to the U. S. Postal Inspection Service, and given a telephone directory with the Pacific Area employees listed. Singh discovered Susan Johnson, Review Board member, was an employee on Bernardine Faison's staff. In her request for Reconsideration, Singh stated that was a conflict of interest for Bernardine Faison to make decisions on an EEO when one of her employees was involved. In fact, Faison issued the Final Agency Decision and the Denial of Reconsideration.

Singh submitted a notarized statement prepared and signed under penalty of perjury by Kathy Major, one of the applicants who was awarded one of the Human Resources Specialist positions which stated that she was given preferential treatment; Joan Harris helped her with her application; Joan Harris constantly

introduced her as young to other employees as young; and that certain other people listed in her statement would not have been given the job, including Singh. This statement was presented to the EEOC in a sealed envelope; however, it was not among the discovery material provided by Defendant. *(A-J)* The information was forwarded to the Postal Service again and Faison denied the rehearing and then the EEOC denied the request for rehearing. *(A-K)* Evidence is relevant when it makes the existence of any fact, which is material in the case more or less probable. *Adams v Ameritech Services, Inc. 231 F.3d 414 (7th Cir. 2000)*

November 6, 2000, Singh filed suit in the District Court of Los Angeles based on age, race and sex. Respondent argued that the suit was untimely because Jones had received the Final Agency Decision on May 3, 1999. Singh argued that since the mailing receipt did not have an official roundate/handstamp, delivery is not an issue. The document was signed for by Veronica Ban____. Attorney Jones only had one employee, which was her son, Clayton Jones. This person was unknown to Singh who had made over approximately 50 – 75 calls to Jones' office since the day she was hired and at all times spoke to Clayton Jones. Even when Singh went to the office, Clayton Jones was the only employee.

Singh could have subpoenaed Jones, but Singh did not believe Jones would be truthful. Jones was contacted and asked for a statement at least seven times,

however, even though she said she would write a statement, she never did.

A court may relieve a party or a party's legal representative from a final judgment, order or proceeding for any other reason justifying relief from the operation of judgment. Jones' behavior exhibited "extraordinary circumstances" to set aside a default rule. (*Federal Rule Civ. Pro. 60(b)(6)*)

Jones failed to appear at the first Administrative Hearing forcing Singh to request a continuance, she seldom returned telephone calls to Singh, did not advise Singh of the Final Agency Decision until July 17, 1999. Jones said she would leave a copy at her office for Singh, however, she did not leave it until July 21, 1999.

The statement from Kathy Major verified she was given preferential treatment and was guaranteed a job when she was interviewed. This evidence makes the consequence more probable. No one piece of evidence has to prove every element of the Petitioner's case; it only needs to make the existence of any fact that is of consequence more or less probable. *Federal Rules of Evidence, Rule 401*

The district court ordered Singh to bring anyone in from the Postal Service to explain postal procedures regarding Certified mail. Singh attempted to bring the "Best Evidence" which was the testimony of Manager A. Rivera of the Santa Ana Post Office, the delivery

office for Cassandra Jones. Through the manager, the carrier who actually delivers Jones' mail could have explained whom he delivered Jones' mail to and whether he delivered signature mail or left notices. He could have explained how he handled mail that required a signature.

Additionally, Singh had to follow proper procedures for having an employee appear in court, which meant Rivera had to be subpoenaed. Singh was not allowed to follow proper procedures for requesting an employee to appear in court.

The district court issued this order "Plaintiff not having shown any good cause for an extension of time" granted Summary Judgment for Defendant." *(A-C)*

Singh appealed to the Court of Appeals, Ninth Circuit who stated that Appellant failed to raise a material issue of fact regarding the discrimination action, as her appeal to the EEOC was untimely. District Court decision was affirmed. Singh raised the issue of the Final Agency Decision not being delivered to Attorney Jones or her employee, the EEO investigation being taking longer than 180 days and biased, failure of the AJ to recuse herself, failure to conduct a fair and impartial investigation, and failure to adhere to the Code of Federal Regulations. The district court decision was affirmed.

The Ninth Circuit Court of Appeals stated "This CAUSE came to be heard on the Transcript of the duly submitted. On August 24, 2001, Petitioner prepared a Record from the United States District Court for the Central District of California, Los Angeles and was request for transcripts, and was told by M. Torres, there were no transcripts for this case.

Singh filed a Petition for Rehearing En Banc and stated the facts regarding Jones failing to appear at the first Administrative Hearing forcing Singh to request a continuance, seldom returned telephone calls to Singh, did not advise Singh of the Final Agency Decision until July 17, 1999 and Jones said she would leave a copy at her office for Singh, however, she did not leave it until July 21, 1999. Where the client demonstrated gross negligence on the part of counsel, a default judgment against the client may be set aside pursuant to the "catch-all" clause of rule governing relief from judgment. Singh demonstrated "extraordinary circumstances" that justified relief from the default judgment where the attorney virtually abandoned him by failing to proceed with the defense. Jones abandoned Singh. *Daniel Masden v State of Nevada, 36 Fed. Appx. 609; 2002 U.S. App. Lexis 11721*

Jones is the cause of Singh's untimely appeal.

REASONS FOR GRANTING THE PETITION

1. Title 28 United States Codes Section 455- Disqualification of justice, judge or magistrate:

(a) Any justice, judge, or magistrate of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned. Since Jones and Tilman made derogatory remarks about each other, Singh felt there was a conflict between them causing Singh to request Tilman be replaced. ALJ Tilman should have recused herself.

Employees have a right to expect fairness when going through the EEO process. When an employee expresses serious concern regarding an attorney she hired and an appointed judge administrative judge relationship, and immediately raises the issue by writing to the EEOC requesting a different judge, that concerned should be addressed. For Judge Tilman to take 355 days to render a decision within a few days of her retirement is an example of abuse of process and - should have remanded the case back to the district court.

2. This question is of great importance because many of the Certified Mail receipts in Singh's EEO case file do not have an official postmark. If the document does not have a postmark, then the date of delivery is the effective date of receipt. However, in

this case, date of delivery cannot be determined because Certified Letter #Z 266 721 753, that contained the Final Agency Decision, was not delivered to Jones or her son and the Postal Service does not have a record of delivery. When there is no postmark on the mailing receipt, that document is not officially mailed. *Ben S McVay v. Delaware County Auditor Board of Revision and the Delaware County Auditor, Case No. 96-P-645, (July 25, 1997).* The U S Postal Service cannot exempt itself from its own mailing procedures.

The EEO investigators are housed in post offices, they have access to postal clerks who can accept their mail, which would protect the integrity of the mailing. Certified Mail receipts must always have an official postmark to be considered officially mailed.

3. Joan Harris presented a statement denying that she had anything to do with the selection process, when in fact, she made the final selection. Singh was not a finalist because she was denied a fair opportunity to compete. Harris stated she did not know how many applications were submitted she did know who and how many applied. Harris did know and was hand delivered a copy of the roster. Per Kathy Major's statement, Harris expected Singh to file an EEO.

Singh submitted a sealed a notarized statement prepared and signed under penalty of perjury by Kathy Major, one of the applicants who was awarded one of the Human Resources Specialist positions to the EEOC.

Major stated that she was given preferential treatment; Joan Harris helped her with her application; Joan Harris constantly introduced her as young to other employees as young; and that certain other people listed in her statement would not have been given the job, including Singh. This statement was presented to the EEOC in a sealed envelope, however, it was not among the discovery material provided at the district court level.

This Petition should be granted to protect the employees 5th and 14th Amendment rights as provided under the Constitution. The Postal Service is an equal opportunity employer for all persons. This case would help clarify CFR procedures and would promote fairness in the investigation and consideration of federal EEO complaints. *(CFR 1614.101(a)*

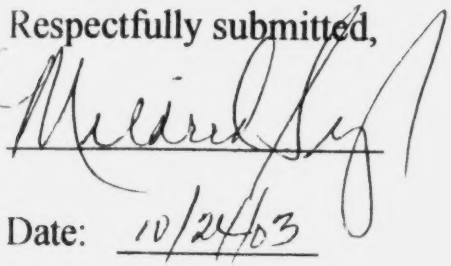
This case would allow EEO's to be processed faster with more uniformity. *(CFR 1614.102(a)(2).*

Additionally, employees would give employees the assurance that their complaints are really being investigated thoroughly and professionally and drastically reduce the processing time for EEO's in the Postal Service and reduce the backlog. *(CFR 1614.102(c)(5).*

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: 10/24/03

NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Filed
MAY 12, 2003
CATHY A. CATHERSON,
CLERK
U. S. COURT OF APPEALS

MILDRED SINGH

Plaintiff – Appellant,

v.

William J Henderson, Postmaster General, of the United States Postal Service, et al.,

Defendants- Appellees

NO. 01-56400

D.C. No. CV-00-11785-AHM
Central District of California
Los Angeles

ORDER

Before: FRIEDMAN*, KOZINSKI, AND RAWLINSON, Circuit Judges.

The panel has voted to deny the petition for rehearing. Judges Kozinski and Rawlinson voted, and Judge Friedman recommended, to reject the petition for rehearing en banc.

The full court has been advised of the petition for rehearing en banc, and no judge of the court has requested a vote.

The petition for rehearing filed on April 8, 2003, is denied, and the petition for rehearing is rejected.

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*The Honorable Daniel M. Friedman, Senior United States Circuit Judge for the Federal Circuit, sitting by designation.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 01-56400
CT/AG#: CV-00-11785- AHM

MILDRED SINGH

Plaintiff – Appellant

v.

WILLIAM J. HENDERSON, Postmaster General, of the United States Postal Service; JOHN E. POTTER, Postmaster General of the United States Postal Service

Defendants – Appellees

APPEAL FROM the United States District Court for the Central District of California, Los Angeles.

THIS CAUSE came on to be heard on the Transcript of the Record from the United States District Court for the Central District of California, Los Angeles and was duly submitted.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court, that the judgment of the said District Court in this cause be, and hereby is AFFIRMED.

Filed and entered: 02/24/03

UNITED STAES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No. CV 00-11785 AHM (Ex) Dated: July 5, 2001

Title: Mildred Singh v. William J. Henderson, Postmaster General

DOCKET ENTRY

PRESENT: THE HONORABLE A. HOWARD MATZ, JUDGE

Steven Montes
None
Courtroom Clerk Court Reporter

ATTORNEYS PRESENT FOR PLAINTIFF:
ATTORNEYS PRESENT FOR DEFENDANTS:
NO APPEARANCE

PROCEEDINGS: In Chambers

On June 18, 2001, the Court held a hearing on Defendant's Motion for Summary Judgment. On that same date, the Court issued a written Order Conditionally Granting Defendant's Motion for Summary Judgment unless Plaintiff Singh could produce, by not later than July 2, 2001, admissible

evidence to support her contention that her attorney's office did not receive the Final Agency Decision ("FAD") until 30 days or less before June 7, 1999. Otherwise, if Singh did not file any admissible evidence probative of when her attorney received the FAD, Defendant's Motion for Summary Judgment would be granted in its entirety. Plaintiff did not come forward with any such admissible evidence and she offers no new evidence in her June 29, 2001 filing that the Court did not previously consider. In fact, it appears that Plaintiff did not pursue any formal discovery at all since June 18, 2001. The dismissal of this action will not be delayed while Plaintiff pursues whatever complaint she may have against her attorney with the State Bar.

That June 18, 2001, Order having been filed and Plaintiff not having shown any good cause for an extension of time in her June 29, 2001 filing, an Order Granting Defendant's Motion for Summary Judgment is being entered separately on this date.

IT IS SO ORDERED.

MINUTES FORM 11

CIVIL – GEN ENTERED ON JULY 6, 2001

Initials of Deputy Clerk sm

EEO Investigative Affidavit

Joan M Harris
Senior Safety Specialist

Los Angeles District
EAS-21
7001 S Central Ave
Los Angeles CA 90052

The non-selection of Mildred Singh was determined by a Review Board. Yes, two craft employees were ultimately selected to fill the 2 HR Specialists positions. They are Darrell Lewis, male, and Kathy Major. I do not know their race and I think it would be inappropriate for me to ask employees their race. Mildred Singh was NOT a finalist, therefore, could not have been selected for the position. The selection procedure used was that used for all EAS positions. See attachment. A vacancy notice was posted, applicants were free to apply, an appointed review board screened the applicants, the finalist list and their applications (991's) were forwarded to me. Mildred Singh was NOT among them. I do not know how many 991's were submitted in the package, for I saw the application of only the finalists selected by the review board. I was the selecting official with approved concurrence by the Manager, Human Resources, Los Angeles District. The Personnel Dept. established the review board, according to the regulations attached. The board conducted the interviews. The complainant's allegations that I influenced is untrue. Additionally, I did not make the

statement concerning Kathy Major that Mildred Singh alleged. I have no idea what complainant's statement, "new, young staff members" means since I never said that. The dates of birth and sex of the two applicants selected is Darrell Lewis, _____ and Kathy Major, ____. I do not know their race, I could speculate, nor do I think it is appropriate to ask them their race. I do not have access to the employees personnel records. I do not know all candidates in the promotion package. This information must be obtained from personnel staff.

Mildred Singh had applied for several positions while working for me. Although in two cases she was granted an interview, she was never selected.

s// Joan M. Harris 5/12/97

EEO Compliance Processing Center
Southern California
UNITED STATES
POSTAL SERVICE

December 6, 1996

SUBJECT: FINAL INTERVIEW Certified #P477-469-935
CASE NO: 4F-900-0062-97 Return Receipt Requested

MEMORANDUM TO: MILDRED SINGH

This is in response to the EEO complaint that you filed against the Van Nuys Post Office on October 21, 1996, whereby you alleged discrimination based on race, sex and age, in that, you were not interviewed for an Human Resources Specialist, EAS-15 position.

Inquiries were made into you allegations of discrimination and the following was ascertained. Joan Harris, Sr. Safety Specialist, stated that in no way was there any intent of discrimination in the selection of the Human Resources Specialist, EAS-15 position. Specialist Harris stated that as you were not interviewed by the review board your name was not in the final consideration for selection. She felt that she had no input to this result, as an evaluation for the position was not required from her. Katherine Robinson, Human Resources Specialist, Personnel, stated that there were thirty-two (32) candidates for the

posted vacancies and the interview board eliminated candidates prior to interviewing. She stated that eleven (11) candidates were interviewed for the positions and two (2) were selected. No further redress was offered.

This letter will serve as the final interview in the matter thereby concludes counseling. If you are dissatisfied with management's response, you may file a formal complaint.

Enclosed is a PS Form 2579A, Notice of Right to file an individual Complaint and a PS form 2565, EEO Complaint of Discrimination in the U S Postal Service and P S Form 2563B, Allegations of Discrimination based on Age. If you wish to file a formal complaint, you have fifteen (15) days from receipt of this letter to file your request for a formal investigation. Your request should be addressed to the Southern California EEO Processing Center, 13031 W Jefferson, Inglewood, CA 90311-9411.

Sincerely,

Lolita Moudakis
EEO Counselor/Investigator (Ad Hoc)

Attachments
13031 W Jefferson Blvd
Inglewood CA 90311-9411

8332 Coral Ln
Pico Rivera CA 90660
February 17, 1998

Equal Employment Opportunity Commission
255 E Temple Street, 4th Floor
Los Angeles CA 90012

RE: EEOC NO: 340-97-4002X
CASE NO: 4F-900-0062-97

I am requesting Judge Dawn Tilman be excused from my EEO case. On December 6, 1997, I received a letter stating that my Prehearing conference was scheduled for December 12, 1997 at the Los Angeles Post Office. I immediately notified Cassandra Jones, Attorney, 1202 North Broadway, Santa Ana, CA 92701, (714) 972-3141. I faxed her a copy of the information. She was not able to attend the Prehearing Conference because of a family emergency. I attended and asked Judge Dawn Tilman for a continuance. When I told her who my representative was, she stated that my attorney, Cassandra Jones, never makes it to the Prehearing Conference. These may not be her exact words, but the words were very close. I was really upset by her remark. I felt this was unprofessional behavior and that she would let her feelings toward Cassandra Jones spill over into my hearing. She also stated that Ms. Jones would have to set up the hearing and it would be by phone, because she was not coming back to the post office.

I met Cassandra Jones in October when I retained her to represent me. I was given three (3) names by the EEOC, Judge Abrahms. I chose her because she had represented other postal employees.

Since December 12, I have called Judge Tilman twice, (213) 894-1060, because I wanted to know whether there was a time frame for rescheduling the Prehearing Conference. She never returned my call. Also, Cassandra Jones has called Judge Tilman twice and received no return call. When Ms. Jones saw Judge Tilman at another hearing, they rescheduled my Prehearing Conference for March 3, 1998.

Could you please assist me in having a different Judge assigned to my case? Please contact my Attorney, Cassandra Jones, 1202 North Broadway, Santa Ana, CA, 92701, (714) 972-3141 and me at home this week only (February 17 –20) because I am on annual leave, (562) 942-1349. I am very concerned on how fairly I will be treated. I have really tried to work with EEO by submitting my information timely and by presenting information to substantiate my claim so I would not waste your or mine time. There has been times when I did not even receive a response from EEO. Therefore, I have asked Congressman Esteban Torres to assist me in having a new Judge assigned to my case.

Thanks for you time and consideration in this matter.

Respectfully,

Mildred Singh
Work (213) 586-2656

UNITED STATES POSTAL SERVICE
EQUAL EMPLOYMENT OPPORTUNITY CASE
IN THE MATTER OF

Mildred Singh	)EEO Case No. 4F-900-0062-97
c/o Cassandra Jones, Esq	)
1202 N Broadway	)EEOC No. 340-97-4002X
Santa Ana CA 92701	)
	)
Complainant	) Filed on: December 11, 1996
	)
v.	)CERTIFIED MAIL #z266721753
	)RETURN RECEIPT REQUESTED
William J. Henderson	)
Postmaster General	)
Respondent	)
	)

This is the Postal Service's Final Agency Decision on the above –referenced discrimination complaint. The complainant alleged discrimination based on race (African-American), gender (female) and age (Date of Birth), when she was not selected for an interview for the Human Resources position for which she applied.

The case was processed pursuant to applicable Equal Employment Opportunity Commission (EEOC) regulation in CFR section 1614; and upon receipt of the investigative file, the complainant requested a hearing before an EEOC Administrative Judge. The case was forwarded to the District Director, EEOC,

Los Angeles, California. On February 12, 1999, Administrative Judge Dawn Tilman issued a decision without a hearing pursuant to 29 CFR section 1614.109(e)(3) recommending a finding of no discrimination.

The transmittal letter was dated March 8, 1999 and received at the EEO Compliance and Appeals Section, Pacific/Western Areas, South San Francisco, California on March 12, 1999.

DISCRIMINATION ISSUES

In McDonnell-Douglas Corp. v. Green 411 U.S. 792 (1973), Supreme Court set forth the basic allocation of the burden and order of proof in a Title VII case. See also, Texas Department of Community Affairs v. Burdine, 450 U.S. 248 (1981). Under the McDonnell-Douglas and Burdine, constructions, a three-step process is involved in a disparate treatment case, the first step of which is for the complainant to establish a prima facie case of discrimination. See McDonnell-Douglas, supra, at 802. This prima-facie case rests on the assumption that fulfilling its requirements establishes facts from which an inference can be drawn that if the employer's actions remain unexplained,

it is more likely than not that such actions were based on a discriminatory criteria illegal under the Act. Furnco Construction Co. v Waters, 438 U.S. 567 (1978).

If the complainant has been successful in establishing a prima facie case, the employer must then articulate a legitimate, non-discriminatory reason for the employment decision. The employer need only demonstrate that a genuine issue of fact is raised by the evidence as to its actions in order to meet its burden of going forward with the evidence. See Furmo, supra; Board of Trustees of Keene State College v Sweeney, 439 U.S. 28 (1978).

Having done so, the burden shifts back to the complainant to prove by a preponderance of the evidence that the employer's reason was a pretext for intentional discrimination. McDonnell-Douglas, supra, at 802-804; Burdine supra, at 252-253; United States Postal Service Board of Govenors v. Airkens, employer did not rely on its proffered reason or that the proferred reason is not worthy of belief. In sum, proof of discriminatory motive is critical in a disparate treatment case, International Brotherhood of Teamsters

v. U.S., 431 U. S. 324. at 325 (1977), and the burden of proof remains at all times with the complainant. Burdine, supra, and Aikens, supra.

AGE DISCRIMINATION

The Age Discrimination in Employment Act (the ADEA) provided that all personnel actions affecting federal employees in executive agencies who are at least 40 years of age shall be made free from any discrimination based on age. 29 U.S.C. Section 633(a).

An employee alleging age discrimination in violation of the ADEA must prove, by a preponderance of the evidence, that age was a determining factor in the personnel action. Age must "make a difference" in that, but fore the presence of age discrimination, an employee would not have been adversely affected by the challenged personnel action. EEOC v Borden's Inc., 724 F. 2d 1390, 1393 (9th Cir. 1984).

DISCUSSION

The administrative judge concluded in her analysis and findings that the complainant failed to prove

discrimination on any basis. Credible testimony disclosed that all the interviews had a higher rating that complainant and most of the interviewees were both African-American and over 40. The judge found that the person who complainant alleged discriminated against her, had no influence in the ratings nor the interviews. The person selected the two candidates who were rated highest on the list. The judge recommended a finding of no discrimination.

CONCLUSION

After a review of the entire record, the Postal Service adopts the administrative judge's findings of Fact and Conclusion of Law.

Therefore, EEO Case No. 4F-900-0062-97 is hereby closed. By copy of the EEOC Supervisory Administrative Judge's March 8, 1999, letter, copies of the Finding of Fact and Conclusions of Law were transmitted too the complainant and her attorney.

APPEAL RIGHTS:

RIGHT TO FILE A CIVIL ACTION

If you are dissatisfied with the Postal Service's final decision in this case, you may file a civil action in an appropriate U. S. District Court within 90 calendar days of your receipt of the Postal Service's final agency decision. If you choose to file a civil action, that action should be captioned Mildred Singh v. William J. Henderson, Postmaster General. You may also request the court to appoint an attorney for you and to authorize the comment of the action without the payment of fees, costs, or security in such circumstances as the court deems just. Your application must be filed within the same 90-day time limit for filing the civil action.

APPEAL TO THE EEOC

Alternately, you may file an appeal with the Office of Federal Regulations (OFO), Equal Employment Opportunity Commission (EEOC), P. O. Box 19848, Washington, D.C. 20036-9848, within 30 calendar days of your receipt of this decision. Enclosed is a copy of EEOC Form 573, Notice of Appeal/Petition to

the Equal Employment Opportunity Commission, Office of Federal Operations, should you wish to appeal this matter. Any supporting statement or brief must be submitted to the EEOC within 30 calendar days of filing the appeal. Along with your appeal, you must submit proof to the EEOC that a copy of the appeal and any supporting documentation were submitted to the EEO Compliance and Appeals Coordinator, Pacific//Western Areas, U.S. Postal Service, P.O. Box 4402, South San Francisco, CA 94099-4402. Failure to file within the 30-day time period could result in the EEOC's dismissal of the appeal unless you explain, in writing, the extenuating circumstances which prevented you from filing within the prescribed time limit. In this event the extension of the time limit and acceptance of the appeal will be discretionary with the EEOC.

April 29, 1999
Date

s// Faison
for Brian J. Gillespie,
Human Resources
Pacific Area

Enclosures (EEOC Form 573)

cc: Dawn Tilman (w/o enclosure)
Administrative Judge
U. S. EEOC, Los Angeles District Office
255 East Temple Street, 4th Floor
Los Angeles CA 90012-3334

Appendix H
1

Z 266 721 753

US Postal Service

Receipt for Certified Mail

No Insurance Coverage Provided.

Do not use for International Mail (See reverse)

Sent to M. Singh	
Street & Number	
Post Office, State, & ZIP Code	
Postage	$
Certified Fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to Whom & Date Delivered	
Return Receipt Showing to Whom, Date, & Addressee's Address	
TOTAL Postage & Fees	$
Postmark or Date 7/29/99	

PS Form 3800, April 1995

BEST AVAILABLE COPY

Is your RETURN ADDRESS completed on the reverse side?

SENDER:
- Complete items 1 and/or 2 for additional services.
- Complete items 3, 4a, and 4b.
- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write "Return Receipt Requested" on the mailpiece below the article number.
- The Return Receipt will show to whom the article was delivered and the date delivered.

I also wish to receive the following services (for an extra fee):
1. ☐ Addressee's Address
2. ☐ Restricted Delivery

Consult postmaster for fee.

3. Article Addressed to:

MILDRED SINGH
C/O CASSANDRA JONES ESQ
1202 N BROADWAY
SANTA ANA CA 92701-3412

4a. Article Number
Z 256 721 753

4b. Service Type
☐ Registered ☒ Certified
☐ Express Mail ☐ Insured
☐ Return Receipt for Merchandise ☐ COD

7. Date of Delivery 5/19

5. Received By: (Print Name)

6. Signature: (Addressee or Agent)
X Monica Bianchi

8. Addressee's Address (Only if requested and fee is paid)

Thank you for using Return Receipt Service.

PS Form 3811, December 1994 Domestic Return Receipt

Appendix H
2

Human Resources
Pacific Area Office

Unites States
Postal Service

July 14, 1999

CERTIFIED MAIL RECEIPT #Z380958385
RETURN RECEIPT REQUESTED

William J Bartlett, Director
Compliance and Control Division
Office of Federal Operations – EEOC
P O Box 29848
Washington, D. C. 20036-9848

Re: MILDRED T. SINGH
Agency EEO No. : 4F-900-0062-97
Docket No.: 01995079
EEOC No.: 340-97-4002X

Dear Mr. Bartlett:

Enclosed is the case file for the above referenced appeal. The appeal appears to be untimely. Complainant's Attorney received the Agency's final decision on June 7, 1999. The appeal should therefore, be dismissed.

If the appeal is accepted as timely, then the Agency submits that the Complainant's case was reviewed thoroughly by the EEOC Administrative Judge who found that the Complainant was not the victim of discrimination or retaliation. The complainant has not submitted any relevant information on appeal, that would rebut the Judge's decision.

Therefore, for the reasons stated therein, the Agency requests that its final decision dated April 29, 1999, be affirmed.

s// Bernedine Faison
EEO Appeals Coordinator

Enclosure

400 Oyster Point Blvd
South San Francisco CA 94099-4400
(415) 635-3200
Fax (415) 635-3201

September 7, 1999

To: U. S. Equal Employment Opportunity Commission

Appeal # 01995079
Agency # 4F-900-0062-97

My name is Kathy Anne Vardoulis (formerly Kathy A, Major). I was an employee of the United States Postal Service from Feb'87 through Sept. '98. I was detailed into the Safety Office from April '96 until being promoted in 1998. During that time, I worked with both Joan Harris and Mildred Singh. There were several times I witnessed Mildred Singh being discriminated against and I would like to give you examples of them.

When I first arrived, Mildred Singh was constantly being praised for her outstanding work. She did all the work the specialist did, aside from some field work. Ms. Harris constantly spoke highly of her, until I shortly after I arrived.

During the time Mildred was working in the office, we had visitors from Las Vegas, Connecticut, Massachusetts and Chicago. These groups of Postal Service Safety professionals came to see the programs we implemented and had success with. The meetings included the visitors, Ms. Harris, Norman Fields,

Darrell Lewis and myself. During these meetings she referred to Darrell and I as her **"new, young staff who will be the future of the Postal Service and the Safety Office".**

After the Human Resources Specialist job was posted, Ms. Harris called me into her office and talked about other employees who would probably apply. Warren Johnson and Wendell Jenkins both talked to her about the job and she told me she wants them to remain in the C.O.P. program that she started. This is automatically discriminating against them. While in her office, all of the sudden I was told by Ms. Harris that "Ms. Singh did not have what it takes to be a specialist". I was shocked as she was more qualified than I. She also told me that Mildred was in Personnel prior to the Safety Office. She said Mildred was watching people check in/out and documenting it to file numerous EEO's. I knew this was not true as several people told me they just needed to downsize the office. Once again a lie on Ms. Harris' part. She also told me that Mildred Singh had an interview with the Inspection Service and that she didn't get an interview. She failed to tell me that she was supposed to fill out Mildred's evaluation form. She often stated, "I don't know what I would do without Mildred in the office." Now I see she would do whatever I took to keep her, including lying to other staff and jeopardizing her career advancement efforts.

Before the new position was available, Ms. Harris wrote things I should say and how to work them on my 991 so I would get the job. She also made Mr. Fields available to help me on the clock, where she did not give others in the office the same opportunities. She gave me more opportunities than the others because "you will be the one to replace me when I'm gone", she said. Darrell Lewis and Mildred were not qualified for the job.

Before I knew I had an interview, Ms. Harris told me that Mildred did not get one. She also told me, "I know she will file an EEO". Several times she told me "she did not want someone so negative (as she looked toward Mildred) working in her office. She also told me not to worry about the job, since "all I had to do was to get an interview and I would be in." Obviously she had it planned for me to get the job, since at least four others who were more qualified, with me being the youngest.

Before they announced the successors to the job, Ms. Harris pulled Darrell and me into her office and told her we both got the positions. She said, "don't tell anyone". After the jobs were awarded, she pulled me into her office and had me make copies of the finalists 991's "in case Mildred files an EEO, which she expects, and do not tell anyone". She was preparing for this from the beginning.

Another instance to show Ms. Harris' actions is when I

told her I was pregnant. Up to this point she was training me for her job, including sending me to UCLA. She also sent Darrel Lewis because, "I can't just send you because it will show favoritism'. She told me that if I ever had a problem or did not feel well to let her know. I was working 10-12 hours a day until I was 6 months pregnant. The first time was when she wanted to send me into the field and I was sick and dizzy and I told her. She got angry. She made someone else go. As soon as everyone returned from the field, she sat us all down at the conference table and said "If you can't do all aspects of the job, I don't have any work for you". She degraded me in front of everyone. The second instance, I told her first thing in the morning that I was dizzy and sick so she sent me to our nurse who informed me that my blood pressure was extremely high. I returned to the office and she sent me home. I went to my doctor who wrote me off the rest of my pregnancy. A couple of times, Mr. Norman Fields called me at home to tell me she wasn't going to pay me, even though I submitted my doctors letters. She tries to make life difficult for you if she gets upset with you. This treatment is what caused me to quit my job of 12 years. I was on leave until July '98 when she started to harass me about returning. Since she was not paying me, I needed to sign disability papers so I could use that money to find day care for my son. I sent it certified mail in which Marciela Lujan signed for. She sent me back the

paperwork with a letter that said, "since you are no longer an employee of the safety office, you need to contact payroll to clear this up. I cannot help you". All the forms called for was her to verify my absences and sign it. Since she did not sign it, I called her boss Mr. Botello and explained that I wanted to return but need the money. He told me to send her the papers again and he would instruct her to sign them. I did so. She than called my house and left me a nasty message that said, "How dare you go above me. Next time have the decency to talk to me first." I did just that and she said she could not help me. All I wanted was for her to do her job.

Several times she has lost reports and the staff has had to redo them. She would also give written instructions, which we all kept to show her what she said, and she would then tell us that's not what she wanted us to do. She has had several problems with her memory. She has made mistakes before and denied them like she is doing about discriminating against Mildred, and I have also witnessed her blaming them on everyone but herself.

I declare under penalty of perjury that the foregoing statements are true and correct.

If you have any questions, feel free to contact me at (626) 309-9470.

s// Kathy Anne Vardoulis (formerly Kathy A. Major)
5606 N. Noel Drive
Temple City, CA 91780-2319

Subscribed and sworn to before me
This 8th day of November 1999
By s// Kathy Anne Vardoulis

Jeanne F. Meisser
COMM#1116470
Notary Public - California
Los Angeles County
My Comm. Exp.
Nov. 11, 2000

UNITED STATES
POSTAL SERVICE

COPY FOR YOUR
INFORMATION

January 27, 2000

CERTIFIED MAIL #Z266 840 513
RETURN RECEIPT REQUESTED

Robert J. Barnhart
Acting Director
Compliance & Control Division
Office OF Federal Operations
U.S. EEOC
P. O. Box 19848
Washington DC 20036-9848

FILE

RECEIVED BY:
EEO COMPLIANCE
PRACT SOUTHERN
CALIFORNIA

Request for Reconsideration
Re: Mildred T. Singh
Agency EEO No.: 4F-900-0062-97
OFO Docket No.: 01995179 (05A00274)

Dear Director:

This correspondence is in response to your January 10, 2000 letter which was received in this office on January 14, 2000, regarding the above-referenced request for reconsideration.

The agency is opposed to the request for reconsideration because it does not include written argument or evidence which tends to satisfy any of the

criteria by which the Commissioners normally evaluate such requests. The request does not contain new and material issue that was not readily available when the previous decision was issued; the previous decision does not involve an erroneous interpretation of law or regulations or misapplication of established policy; and the previous decision does not set a precedent which involves a new or unreviewed policy consideration that may have effects beyond the actual case at hand is not otherwise of such an exceptional nature as to merit the personal attention of the Commissioners.

Sincerely,

s//Bernedine Faison
EEO Compliance & Appeals Coordinator
Pacific/Western Areas
P O Box 4402
So. San Francisco CA 94099-4402

cc: Mildred T. Singh, 8332 Coral Ln
Pico Rivera, CA 90650-5106